



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
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MEMORANDUM FOR:

D. Robert Lohn,
Regional Administrator, Northwest Region

MAY 19 2003

FROM:

William L. Robinson, *Puget Sound (F)*
Assistant Regional Administrator
for Sustainable Fisheries Division

SUBJECT:

A Joint Tribal and State Resource Management Plan (RMP)
submitted under Limit 6 of the 4(d) Rule by the Puget Sound
Treaty Tribes and the Washington Department of Fish
Wildlife for salmon fisheries and steelhead net fisheries
affecting Puget Sound chinook salmon – **DECISION
MEMORANDUM.**

ESA 4(d)

Tracking Number: NWR/4d/06/2003/001

ESA Section 7

Tracking Number: F/NWR/2003/00174

ISSUE

National Marine Fisheries Service (NMFS) Northwest Region's Sustainable Fisheries Division has evaluated the RMP for harvest of Puget Sound chinook salmon provided by the Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife (co-managers). NMFS evaluated the RMP pursuant to the protective regulations promulgated for Puget Sound chinook salmon under a section 4(d) rule (referred hereafter as the 4(d) Rule) of the Endangered Species Act (ESA). The 4(d) Rule provides limits on the application of the take prohibitions, i.e., take prohibitions would not apply to the plans and activities set out in the rule if those plans and activities met the rule's criteria. One of those limits (Limit 6) applies to RMPs. The RMP evaluated, dated February 19, 2003, is titled "Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component." The 2003 RMP provides the structure through which co-managers will jointly manage Puget Sound salmon fisheries and the steelhead net fisheries that may affect listed Puget Sound chinook salmon.

RECOMMENDATION

NMFS Northwest Region's Sustainable Fisheries Division finds that the 2003 RMP's management objectives incorporate, and are consistent with, the best available scientific information on the population structure of the Puget Sound chinook salmon ESU. NMFS Northwest Region's Sustainable Fisheries Division analysis on the implementation of the 2003



RMP identifies the likelihood that 19 of the 22 populations within the ESU will meet NMFS' or the Viable Salmonid Populations (VSP) paper's guidance standards. NMFS Northwest Region's Sustainable Fisheries Division analysis of the implementation of the 2003 RMP also identifies the likelihood that that 3 populations (Dosewallips River, the lower Skagit River, and the Nooksack River) will not meet NMFS' or the VSP paper's guidance standards.

Based on the considerations discussed in Section (b)(4)(i)(D) of the Evaluation and Recommended Determination, the potential, slightly higher risk that these three populations may be expected to experience in 2003, in this one-year harvest management plan, will not appreciably reduce the likelihood of the ESU's survival and recovery. Overall, the management objectives in the 2003 RMP are protective of the geographic, life history, and diversity of the ESU. Therefore, NMFS Northwest Region's Sustainable Fisheries Division concludes that the implementation of the one-year 2003 RMP will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild.

It is the recommendation of NMFS, Northwest Region's Sustainable Fisheries Division, that the 2003 RMP, dated February 19, 2003, titled "Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component" which was provided by the Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife, be determined to adequately address all of the criteria established for Limit 6 of the ESA 4(d) Rule for the listed Puget Sound chinook salmon Evolutionary Significant Unit, and be found to not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon ESU.

BACKGROUND

The 2003 RMP's primary objective is to manage "harvest of strong salmon stocks to ensure that fishery-related mortality will not impede recovery of the productivity, abundance, and diversity of natural Puget Sound chinook salmon populations..." (page 7 of the 2003 RMP). The co-managers propose to achieve this objective by limiting the adverse effects on listed chinook salmon populations. The 2003 RMP will be effective from May 1, 2003, through April 30, 2004.

The 2003 RMP contains management objectives, which include: (1) a recovery exploitation rate; (2) an interim escapement goal; (3) a critical abundance threshold; and (4) a minimum fishery regime exploitation rate.

(1) Recovery Exploitation Rate:

The co-managers define exploitation rate as the total "mortality in a fishery or aggregate of fisheries expressed as the proportion of the un-fished cohort removed by fishing" (page 67 of the 2003 RMP). The 2003 RMP's recovery exploitation rates are ceilings, not to be exceeded. The co-managers propose that exploitation rates at or below the 2003 RMP's recovery exploitation rate ceilings will not impede the ability of the populations to recover.

(2) Interim Escapement Goal:

The 2003 RMP includes interim escapement goals (sometimes referred to as the “interim reference escapement goals” in the 2003 RMP) for all populations or management units. The co-managers define the interim escapement goal as the “interim upper boundary” of the range of viability (page 56 of the 2003 RMP), a point where the population has a very low probability of extinction. The 2003 RMP further defines viable as a “descriptor of a salmon population that has a negligible risk of extinction over a 100-year time frame due to threats from demographic variations, local environmental variations, or threats to genetic diversity” (page 70 of the 2003 RMP). The 2003 RMP’s interim escapement goals establish the upper escapement thresholds of the co-manager’s management objectives.

(3) Critical Abundance Threshold:

The 2003 RMP includes a critical abundance threshold for each population or management unit. The co-managers define the critical abundance threshold as a “spawning escapement level below which the co-managers will exercise maximum regulatory effect to minimize fishery-related mortalities and maximize spawning escapement” (page 67 of the 2003 RMP). The co-managers state that these thresholds are based on the best available information and “set above the level at which a population may become demographically unstable, or at risk to loss of genetic integrity.”

(4) Minimum Fisheries Regime Exploitation Rate

During the pre-season process (March through April), once chinook salmon adult abundance estimates for the upcoming season are available to the co-managers for all populations of concern, the co-managers will model (using the Fishery Regulation Assessment Modeling program) the Minimum Fisheries Regime outlined in Appendix C of the 2003 RMP. The resulting minimum fishery regime exploitation rate will be applied by the co-managers on individual management units when the forecast abundance for any management unit is anticipated to fall below the 2003 RMP’s critical abundance threshold.

The fisheries under the 2003 RMP will be managed through application of the above management objectives to promote the conservation and recovery of listed chinook populations in Puget Sound. Although the 2003 RMP focuses on Puget Sound salmon fisheries, fisheries-related mortality throughout the migratory range of Puget Sound chinook, from Oregon to Southeast Alaska, is accounted for in these objectives. All Puget Sound populations are taken into consideration by the co-managers in setting the 2003 RMP’s management objectives.

A comprehensive monitoring and evaluation plan included in the 2003 RMP will allow for the assessment of: fishing-related impacts to hatchery and naturally spawning chinook salmon; the abundance of hatchery and naturally spawning fish for each of the identified management units; the effectiveness of the fishing regimes and general approach; and the regulatory compliance. This information will be used to assess whether impacts to listed fish are as predicted pre-season.

In addition, information from the monitoring programs will be used to develop exploitation rate objectives for those management units where data is currently unavailable.

DISCUSSION

Controversial Issues

(1) High Exploitation Rates: There may be some controversy regarding the magnitude of the exploitation rates proposed for application through the 2003 RMP. The total exploitation rates for some management units anticipated under the RMP in 2003 exceed 50 percent. However, the approach used by the co-managers to derive the 2003 RMP's recovery exploitation rate ceilings are generally conservative, requiring high probabilities of recovery and survival of the populations, factoring in data and environmental uncertainty. In addition, the 2003 RMP's recovery exploitation rates are generally consistent with the standards NMFS has used to reach "no jeopardy" determinations in previous ESA consultations for fisheries affecting listed salmon stocks. In 2003, the exploitation rates are anticipated to be below the NMFS' derived ceilings for most management units.

(2) Minimum Fishery Regime Exploitation Rate: The 2003 RMP imposes the minimum fishery regime exploitation rates when abundances fall below critical abundance thresholds. For some populations, there may be concern that the exploitation rates defined by the minimum fishery regime may not be sufficiently protective when abundances are at critical levels. The 2003 RMP's low abundance thresholds are generally conservative, often substantially higher than those developed using NMFS' critical threshold population standards for Puget Sound chinook salmon or through application of Viable Salmonid Populations (VSP) paper's guidelines. Escapements for many depressed stocks have stabilized or increased in recent years under similar exploitation rates, and the co-managers have demonstrated a willingness to apply further restrictions in the fisheries when such restrictions would benefit listed populations.

(3) Canadian Fisheries: Based on the 1996 to 2000 average, Canadian fisheries can account for up to 75 percent of the current fishery-related mortality, depending on the management unit. This Canadian harvest can increase the exploitation rates above the NMFS' rebuilding exploitation rates for some management units.

The management of Canadian fisheries is outside the jurisdiction of the co-managers. In recent years, Canadian fisheries have not harvested chinook salmon at levels allowed under the Pacific Salmon Treaty due to internal Canadian conservation issues. These conservation concerns, primarily pertaining to depressed west coast Vancouver Island chinook salmon and Thompson River coho salmon populations, are expected to continue in 2003 (D. Simmons, NMFS, pers. com. to D. Cantillon, NMFS, January 29, 2003). Concurrent with this restricted Canadian fishing regime, the co-managers implemented management objectives defined in the 2001 RMP to manage the U.S. fisheries during the 2001 and 2002 seasons. Escapement results in 2001 were

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some of the highest during the recent 1998 to 2001 five-year period reviewed (see Table 5 of the Evaluation and Recommended Determination).

The Canadian fishery exploitation rate on Puget Sound chinook salmon was greater in 2002, when compared to 2001 (D. Simmons, NMFS, pers. com. to K. Schultz, NMFS, April 14, 2003). Based on the best available information, the Canadian exploitation rate on the ESU populations in 2003, given similar forecasts, will remain similar to the rates experienced in 2002. Although still preliminary (W. Beattie, NWIFC, e-mail message to K. Schultz, NMFS, April 15, 2003), the overall Puget Sound chinook salmon ESU escapement in 2002 was even greater than the escapement observed in 2001.

Management objectives proposed in the 2003 RMP are very similar to the management objectives included in the 2001 RMP. Most management unit's escapement are expected to continue the stable to increasing trends under the 2003 RMP.

(4) *Litigation:* NMFS, Northwest Region's Sustainable Fisheries Division evaluation of this one-year 2003 RMP satisfies one element of a settlement agreement with Washington Trout. The agreement mandated a one-year ESA decision on Puget Sound salmon fisheries affecting listed Puget Sound chinook salmon in 2003.

Public Review and Comment

NMFS published notice of its Proposed Evaluation and Pending Determination on the RMP for public review and comment on April 2, 2003 (68 FR 16001). The comment period closed on April 17, 2003. The organization Washington Trout submitted comments to NMFS on the Proposed Evaluation and Pending Determination during this open public comment period. No other comments were received during the open public comment period. NMFS has reviewed the comments received and discussed the substantive issues with the co-managers. Attachment 1 summarizes the public comments received and NMFS Northwest Region's Sustainable Fisheries Division responses. Several of the comments were addressed and reflected in NMFS' final Evaluation and Recommended Determination, but no changes were required of the 2003 RMP. Changes in the Evaluation and Recommended Determination which resulted from the public comments received include:

(1) The Proposed Evaluation and Pending Determination incorrectly implies that the Canadian exploitation rate on Puget Sound chinook salmon was similar in 2001 and 2002. More recent information, as the commenter points out, indicates that the Canadian fisheries exploitation rate on Puget Sound chinook salmon was greater in 2002, when compared to 2001. NMFS modified the Evaluation and Recommended Determination to correctly reflect this understanding.

(2) The public commenter suggested that the Proposed Evaluation and Pending Determination incorrectly imply that the past RMP management strategy is responsible for the increased escapement. NMFS recognizes that it is a combination of factors that have contributed to the

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observed stable to increasing five-year trends in escapement. The 2001 RMP is not solely responsible for those trends. The text highlighted by the commenter has been modified in the Evaluation and Recommended Determination to reduce this possible confusion.

(3) The Proposed Evaluation and Pending Determination incorrectly implies that the Salmon and Steelhead Stock Inventory and Assessment identified two populations for the Snohomish River. The 1985 Salmon and Steelhead Stock Inventory and Assessment document identified four populations for the Snohomish River. NMFS modified the Evaluation and Recommended Determination to correctly reflect the Salmon and Steelhead Stock Inventory and Assessment population delineations for the Snohomish River.

Evaluation of RMP under the ESA 4(d) Rule

Attachment 2 is NMFS' evaluation of whether the RMP meets all of the requirements specified under Limit 6 of the 4(d) Rule for Puget Sound chinook salmon. It is NMFS Northwest Region's Sustainable Fisheries Division recommendation that the one-year 2003 RMP for Puget Sound chinook salmon provided by the co-managers be determined to address all of the criteria established for Limit 6 of the 4(d) Rule and that implementation of fisheries pursuant to that RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon ESU.

ESA Section 7 Consultation

Attachment 3 is NMFS consultation with itself on its action of making its determination on the RMP. In this consultation (biological opinion), NMFS concludes that the proposed Federal action is not likely to jeopardize the continued existence of the Puget Sound chinook salmon ESU, or result in the destruction or adverse modification of designated critical habitat.

Essential Fish Habitat (EFH)

NMFS also consulted with itself under the Magnuson-Stevens Act regarding potential effects of its 4(d) Rule determination on EFH for Pacific chinook salmon (Attachment 3). Based on the reason discussed in the attached EFH consultation, NMFS concludes that the proposed Federal actions would not adversely affect designated EFH for chinook salmon.

National Environmental Policy Act (NEPA)

Attachment 4 is Chapter 5 - Finding of No Significant Impact (FONSI) of the environmental assessment for the proposed Federal action. The entire text of the environmental assessment is available upon request.

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U.S. Fish and Wildlife Species (USFWS) Consultation

NMFS presented the USFWS a biological evaluation dated February 24, 2002, titled “Impacts of the Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component on U.S. Fish and Wildlife Service (USFWS) Listed Threatened and Endangered Species, May 1, 2003, through April 30, 2004.” Supplemental information to this biological evaluation was supplied on April 10, 2003. With the exception of marbled murrelet (*Brachyramphus marmoratus*), it is NMFS’ determination that the implementation of the one-year 2003 RMP is not likely to adversely affect listed species under the regulatory purview of the USFWS. Takes of marbled murrelet in the fisheries proposed under the 2003 RMP are covered under existing USFWS’ biological opinions (USFWS 1999, 2001 as cited in the biological evaluation). The USFWS responded with a letter of concurrence with NMFS’ determination on April 18, 2003.

Attachments:

Attachment 1: Public Comments and Responses

Attachment 2: Evaluation and Recommended Determination of a Resource Management Plan, dated May 19, 2003.

Attachment 3: The Endangered Species Act (ESA) Section 7 Consultation / Magnuson-Stevens Act Essential Fish Habitat (EFH) Consultation: Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component - ESA section 4(d) Decision / Determination.

Attachment 4: Chapter 5 - Finding of No Significant Impact (FONSI) of the Environmental Assessment, Puget Sound Chinook Harvest Resource Management Plan.

SUMMARY

As described above, all of the necessary administrative and biological requirements have been met for the approval of the co-managers' 2003 RMP for Puget Sound fisheries potentially affecting listed Puget Sound chinook from May 1, 2003, through April 30, 2004. NMFS Northwest Region's Sustainable Fisheries Division recommends that you determine under 50 CFR 223.203(b)(6) that:

- (i) Pursuant to 50 CFR 223.209 (Tribal Rule) and the government-to-government processes therein, that implementing and enforcing the 2003 RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon ESU; and
- (ii) The 2003 RMP will be implemented and enforced within the parameters set forth in *United States v. Washington* or *United States v. Oregon*.

DETERMINATION

1. I **agree** with NMFS Northwest Region's Sustainable Fisheries Division recommendation that implementing and enforcing the 2003 RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon ESU and that the 2003 RMP will be implemented and enforced within the parameters set forth in *United States v. Washington* or *United States v. Oregon*.

D. Robert Lohn
D. Robert Lohn, Regional Administrator

5/20/03
Date

2. I **do not agree** with NMFS Northwest Region's Sustainable Fisheries Division recommendation on the implementation and enforcement of the 2003 RMP.

D. Robert Lohn, Regional Administrator

Date